

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x

UNITED STATES OF AMERICA :

-v- :

S3 09 Cr. 581 (WHP)

PAUL M. DAUGERDAS, :

ERWIN MAYER, :

DONNA GUERIN, :

DENIS FIELD, :

RAYMOND CRAIG BRUBAKER, and :

DAVID PARSE, :

Defendants. :

----- x

NANETTE L. DAVIS, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury, to the best of her information and belief:

1. I am a Special Assistant United States Attorney ("AUSA") in the office of Preet Bharara, United States Attorney for the Southern District of New York. I am one of the AUSAs with responsibility for the prosecution of this case. This declaration is submitted in support of the accompanying Memorandum of the Government in opposition to the omnibus pretrial motions submitted by the Defendants.

2. Attached to this Declaration as Exhibit A is a true and correct copy of the Compensation Agreement of Field, Bee, and Dicker, signed on June 11, 2000 by Denis Field, produced to the Government by BDO.

3. Attached to this Declaration as Exhibit B is a true and correct copy of the Answer of Morgan, Lewis & Bockius, filed in BDO Seidman, LLP ("BDO") v. Morgan, Lewis & Bockius, LLP, Civil Action No. 9640-09M, produced to the Government by BDO.

4. Attached to this Declaration as Exhibit C is a true and correct copy of the October 29, 1999 Letter from C. Engros to S. Univer re Need for Waiver, produced to the Government by BDO.

5. Attached to this Declaration as Exhibit D is a true and correct copy of the redacted transcript of the grand jury testimony of Miriam Fisher on July 8, 2008.

6. Attached to this Declaration as Exhibit E is a true and correct copy of the redacted transcript of the grand jury testimony of Scott Univer on January 13, 2009.

7. Attached to this Declaration as Exhibit F is a true and correct copy of an October 17, 2000 Letter from Miriam Fisher to Scott Univer, produced to the Government by counsel for Hogan & Hartson.

8. Attached to this Declaration as Exhibit G is a true and correct copy of an email string between Charles Bee and Miriam Fisher, produced to the Government by Hogan & Hartson.

9. Attached to this Declaration as Exhibit H is a true and correct copy of a January 31, 2002 Letter from Miriam Fisher to Charles Engros, produced to the Government by BDO.

10. Attached to this Declaration as Exhibit I is a true and correct copy of a July 24, 2008 Email from James Wing to Robert S. Markin, produced to the Government by BDO.

11. Attached to this Declaration as Exhibit J is a true and correct copy of the Declaration of IRS Special Agent Christine Mazzella, dated August 2, 2010.

12. Prior to the first interview of Miriam Fisher by the prosecutors in this matter, counsel for Ms. Fisher, Mark Srere, of the law firm of Morgan, Lewis & Bockius, and attorneys for DLA Piper advised me that, with respect to the Fisher engagement BDO and only BDO was the client. BDO provided a waiver of its attorney-client privilege prior to the disclosure of materials related to the Fisher engagement and the interviews of Miriam Fisher, Melvin Lefkowitz, and Charles Engros.

Government's Alleged Involvement in BDO Seidman's Decisions about Field's Legal Fees

13. The first and only grand jury subpoena to BDO Seidman was served on BDO on or about February 16, 2006.

14. In meetings with attorneys from DLA Piper (counsel for BDO Seidman in the grand jury investigation), SDNY prosecutors (that is, co-counsel Stanley Okula and your declarant) advised BDO's attorneys that whether or not BDO paid the legal fees of Denis Field was of no interest to the prosecutors and that we would not consider any action of BDO's in that regard as a factor in making a prosecutorial decision as to BDO's entity criminal liability.

15. No attorney from the U.S. Attorney's Office or the Tax Division of the Department of Justice has been involved in any way in any decision-making by BDO with respect to the advancement or payment of legal fees for Denis Field, or any other former or current employee of BDO.

16. Attached to this Declaration as Exhibit K is a true and correct copy of an affidavit of Ellis Reemer of DLA Piper law firm, dated August 2, 2010.

17. Attached to this Declaration as Exhibit L is a true and correct copy of BDO Board Minutes dated October 19, 2003, produced to the Government by BDO.

18. Attached to this Declaration as Exhibit M is a true and correct copy of an October 16, 2003 Memorandum of Shawn Carson, produced to the Government by BDO.

19. Attached to this Declaration as Exhibit N is a true and correct copy of an October 13, 2003 Memorandum from Denis Field to "BDO Partners," produced to the Government by BDO.

20. Attached to this Declaration as Exhibit O is a true and correct copy of an October 13, 2003 Email from Paul Neufelt to Denis Field, produced to the Government by BDO.

21. Attached to this Declaration as Exhibit P is a true and correct copy of an October 13, 2003 Email from Joe Johnson to Denis Field, produced to the Government by BDO.

22. Attached to this Declaration as Exhibit Q is a true and correct copy of an October 13, 2003 Email from Paul Shanbrom to Denis Field, produced to the Government by BDO.

23. Attached to this Declaration as Exhibit R is a true and correct copy of Minutes of November 20, 2003 BDO Governance Meeting, produced to the Government by BDO.

24. Attached to this Declaration as Exhibit S is a true and correct copy of February 20, 2004 Letter and Arbitration Demand from McGuire Woods to BDO, produced to the Government by BDO.

25. Attached to this Declaration as Exhibit T is a true and correct copy of an October 23, 2003 Email from Robert Friedman to Charles Engros, produced to the Government by BDO.

26. Attached to this Declaration as Exhibit U is a true and correct copy of October 20, 2003 BDO Board Minutes, produced to the Government by BDO.

27. Attached to this Declaration as Exhibit Vis a true and correct copy of October 21, 2003 BDO Board Minutes, produced to the Government by BDO.

28. Attached to this Declaration as Exhibit W is a true and correct copy of a February 2, 2004 Email String between Dick Simmons and BDO Board Members, produced to the Government by BDO.

29. Attached to this Declaration as Exhibit X is a true and correct copy of a Compilation of Legal Fees Paid on Behalf of Denis Field by BDO, produced to the Government by BDO.

Tax Division Conference

30. Pursuant to a request made by defense counsel for conferences with officials at the

Department of Justice Tax Division with respect to any charges that had been recommended by the IRS for prosecution, the declarant and two other attorneys from the Tax Division, Genevieve Collins and Jill Cassara, met with counsel for Daugerdas on March 4, 2009. Consistent with Tax Division procedures governing taxpayer conferences, Ms. Collins described the charges recommended by the IRS, which included conspiracy, tax evasion, filing false returns, and obstruction of the IRS, and made clear to Daugerdas's representatives that the Tax Division is not bound by the IRS's recommended charges. See DOJ Tax Manual §6-4.214 (The Tax Division advises representatives at the meeting that the proposed charges "may change.").

Dated: New York, New York
August 2, 2010



NANETTE L. DAVIS
Special Assistant U.S. Attorney